In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 285

JACK BAER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. 13–16) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on January 24, 1964. A timely motion for rehearing was denied on April 17, 1964. The petition for a writ of certiorari was filed on July 15, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the Court of Claims correctly dismissed the action as barred by the statute of limitations (28 U.S.C. 2501).

744-406—64

STATUTE INVOLVED

Section 2501, Title 28, United States Code, provides in pertinent part:

> Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

STATEMENT

Petitioner commenced this action in the Court of Claims on January 29, 1963, to recover for an alleged "taking" of his property without just compensation. The Court of Claims dismissed the action as barred by the six-year statute of limitations, 28 U.S.C. 2501, ruling that no event concerned with the alleged deprivation occurred after 1953.

The facts giving rise to petitioner's claim were as follows: Prior to 1937, petitioner was a German citizen. As a result of Nazi persecution, he left Germany during 1937, came to the United States and, in 1943, became an American citizen. Before leaving Germany, he left with his brother for safekeeping a package of 880,000 Reichsmarks. Shortly after cessation of hostilities in Europe in May, 1945, petitioner demanded return of the money. However, petitioner's brother (who lived in the American zone of occupied Germany) was unable to comply because Military Government Law No. 53, effective May 28, 1945 (Pet. 17), prohibited the transfer of German funds outside of Germany. In 1946, petitioner lent the money to his brother, who formally acknowledged the obligation.

Petitioner's brother has always been financially able to repay this debt. Petitioner alleged that the value of the 880,000 Reichsmarks was $352,000 (Pet. 4, 14, 17–20).

By Military Government Law No. 63, effective June 26, 1948 (Pet. 20–21), adopted for purposes of monetary reform, the Reichsmark was replaced by the Deutschemark; and a United Nations creditor, like petitioner, was permitted to receive payment from a German debtor of debts expressed in Reichsmarks at the rate of one Deutschemark for every ten Reichsmarks. A creditor, however, might refuse to accept payment on this conversion basis (Pet. 4–5, 14, 20–21). Petitioner did refuse. Subsequently, under Allied High Commission Law No. 46, effective January 25, 1951 (Pet. 21–23), amending legislation concerning monetary reform, petitioner received 88,000 Deutschemarks in 1951, without waiving his right to participate further in the "final settlement of Reichsmark debts owing to United Nations nations * * *" (Pet. 5, 22).

Petitioner alleges that there has never been a settlement of the German post-war external debt, and that he has been unable to collect the remainder of his debt (Pet. 5, 14). On this basis, he asserts that the United States has taken his property without just compensation. He claims more than $935,000, including interest from the date of the alleged taking (Pet. 5–6, 15).

The government challenged the substance of petitioner's claim and also urged the bar of the six-year statute of limitations (28 U.S.C. 2501). In dismiss-

ing, the Court of Claims considered only the question of limitations, concluding (Pet. 13–16):

> * * * If plaintiff's legal rights were invaded by the events mentioned in his petition (as amended), that invasion had plainly been disclosed prior to January 1957. The conversion to Deutschemarks occurred in 1948. If there was legal injury, it became clear at that time or not long thereafter. The plaintiff asserts that, from that time, he could not obtain the bulk of his money. The alleged detriment was both known and definite long before 1957; the effects of the defendant's actions were all revealed and assessable. The bare possibility that some future international settlement—conceivably, decades in the future—*might* authorize plaintiff to collect his debt in full could not postpone the accrual of so specific a claim of present deprivation. This case is wholly unlike [*United States* v. *Dickinson,* 331 U.S. 745] and comparable cases in which the course of future events could reasonably be expected to have a direct effect on the claimant's rights. Here the future circumstance on which the plaintiff relies was a mere indefinite possibility which was too slight to arrest the accrual of the claim (if one existed).

ARGUMENT

The decision below is correct. In addition, even had the statute of limitations not foreclosed petitioner's claim, he presented no substantial basis for recovery. Review by this Court is therefore not warranted.

1. Petitioner claims that his property, *i.e.*, part of the Reichsmark debt owed to him by his brother, was "taken" by the United States through the institution of currency reform in occupied Germany which replaced the Reichsmark with the Deutschemark at a conversion rate of ten to one. Pursuant to this currency conversion, petitioner has received 88,000 Deutschemarks for a prior debt of 880,000 Reichsmarks. There is no substance to the claim that such a currency conversion or reevaluation constituted a "taking" of petitioner's property. The contrary was established at an early date by the *Legal Tender Cases,* 12 Wall. 457, 551–552. The reasons for refusing to consider currency regulations as "takings" are especially strong when they accompany the occupation of foreign territory as a consequence of war. See *Eisner* v. *United States,* 127 Ct. Cls. 323; *Bank of the Philippine Islands* v. *Rogers,* 165 F. Supp. 100 (D. D.C.), affirmed, 281 F. 2d 12, certiorari denied, 364 U.S. 927; *Aboitiz & Co.* v. *Price,* 99 F. Supp. 602, 615 (D. Utah).

2. Even if the currency conversion of Reichsmarks into Deutschemarks was, *arguendo,* a taking, it occurred no later than 1951, twelve years before the present action was begun. Petitioner argues, however, that the currency reform was not intended to be a final settlement of the debt owed to him, because eventual "repayment in full" was contemplated. (Pet. 8.) He reasons that the pendency of final settlement delayed the date of the taking under the doctrine of *United States* v. *Dickinson,* 331 U.S. 745.

In addition to the reasons stated in the opinion of the Court of Claims as to why the *Dickinson* case is not applicable to the present situation, the following is dispositive against petitioner's contention. Effective May 5, 1955, the United States, along with the United Kingdom, France and the Federal Republic of Germany, signed a protocol terminating the occupation regime in the Federal Republic of Germany and generally returning the powers of government to the Federal Republic. 6 U.S.T. 4251; T.I.A.S. 3425. If, as petitioner contends, no taking had occurred by the date on which the United States relinquished authority over Germany, the United States obviously cannot be made responsible in damages for any taking which occurred thereafter through the subsequent action or inaction of another sovereign. On the other hand, if a taking occurred for which the United States may be held responsible, it must have occurred before May 1955, which was more than six years prior to the institution of the present action.

3. Nor is there merit in petitioner's final argument that Congress was without power to establish a statute of limitations on suits against the United States for a "taking" under the Fifth Amendment. That contention overlooks the fact that, when Congress consents to suit, it may attach such conditions as it deems desirable. One availing himself of the privilege of suing the government is bound by those conditions. *McElrath* v. *United States*, 102 U.S. 426, 440.

CONCLUSION

For the foregoing reasons, petition for writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1964.

U. S. GOVERNMENT PRINTING OFFICE 1964